

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

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DISTRICT COURT
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TX EASTERN - LUFKIN

BY

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JACK D. STIRMAN ON BEHALF OF
HIMSELF AND ALL OTHERS SIMILARLY
SITUATED,

Plaintiff,

v.

MOBIL OIL CORPORATION,
MOBIL NATURAL GAS, INC.,
MOBIL EXPLORATION AND
PRODUCING SOUTHEAST, INC.,
MOBIL EXPLORATION AND
PRODUCING TEXAS & NEW MEXICO,
INC., and
MOBIL EXPLORATION AND
PRODUCING U.S.

Defendants.

CIVIL ACTION NO. 9:99cv255
(JURY TRIAL)

Judge Hannah

COMPLAINT

A. Parties

1. Plaintiff Jack D. Stirman is an individual residing in Brighton, Colorado.
2. Defendant Mobil Oil Corporation is a New York corporation. Mobil Oil Corporation may be served with process by serving its registered agent, Prentice-Hall Corporation System, 800 Brazos, Austin, Texas 78701.
3. Defendant Mobil Natural Gas, Inc. is a Delaware corporation. Mobil Natural Gas, Inc. may be served with process by serving its registered agent, Prentice-Hall Corporation System, 800 Brazos, Austin, Texas 78701.

4. Defendant Mobil Exploration and Producing Southeast, Inc. is a Delaware corporation. Mobil Exploration and Producing Southeast, Inc. may be served with process by serving its registered agent, Prentice-Hall Corporation System, 800 Brazos, Austin, Texas 78701.

5. Defendant Mobil Exploration and Producing Texas & New Mexico, Inc. is a Delaware corporation. Mobil Exploration and Producing Texas & New Mexico, Inc. may be served with process by serving its registered agent, Prentice-Hall Corporation System, 800 Brazos, Austin, Texas 78701.

6. Mobil Exploration And Producing U.S. is a Delaware corporation. Mobil Exploration and Producing U.S. may be served with process by serving its registered agent, Prentice-Hall Corporation System, 800 Brazos, Austin, Texas 78701.

7. All of the Defendants listed above are affiliated entities. Mobil Oil Corporation is believed to be the parent company of the other Defendants. All Defendants will be collectively referred to as "Mobil" unless otherwise noted.

B. Jurisdiction & Venue

8. The Court has jurisdiction under the diversity of citizenship provisions of 28 U.S.C. § 1332. The Plaintiff is a resident of Colorado. None of the Defendants' principal places of business or place of incorporation is Colorado. Therefore, there is a complete diversity of citizenship between Plaintiff and Defendants. 28 U.S.C. § 1332.

9. The Defendants reside in the Eastern District of Texas because they are subject to personal jurisdiction in the Eastern District of Texas. 28 U.S.C. § 1391(c). Venue is therefore appropriate in the Eastern District of Texas. 28 U.S.C. § 1391(a)(1). Venue is also appropriate in the Eastern District of Texas because a substantial part of the events giving rise to the claim

occurred in the Eastern District of Texas including but not limited to the production of natural gas and the payment of royalty on such natural gas on artificially low prices. 28 U.S.C. § 1391(a)(2).

C. Nature of Action

10. Plaintiff is a royalty owner under one or more oil and gas leases owned and operated by Mobil. Plaintiff brings this action individually and on behalf of a class of similarly situated royalty owners (the "Royalty Owners") seeking damages for the underpayment of royalties on natural gas production in the United States. Plaintiff believes there are several thousand royalty owners who are members of the proposed class.

11. This action is brought to recover damages for, among other things, breach of the express and implied terms of the Royalty Owners' oil and gas leases. Mobil stands in the position of Lessee with respect to the Royalty Owners. Mobil has an obligation to manage and administer the leases as a reasonably prudent operator. Plaintiff alleges that Mobil has breached this duty.

D. Class Action Allegations

12. The Plaintiff brings this action on behalf of a class consisting of (1) all individuals and entities that own or have owned royalties under leases producing natural gas and natural gas liquids, (2) owned and/or operated by Mobil and/or any subsidiary or affiliated company of Mobil, (3) where Mobil and/or any subsidiary and/or affiliated company of Mobil markets and/or purchases the gas and/or processes, markets and/or purchases the liquids produced from the gas. The Plaintiff believes that there are several thousand leases that will be subject to this action and that there will be several thousand royalty owners in the class (the "Royalty Owners").

13. While the exact number of class members is unknown at this time and can only be determined by appropriate discovery, the members of the class are so numerous that joinder of all members is impractical.

14. Plaintiff's claims are typical of the claims of the members of the class because the Plaintiff is a royalty owner, as are all of the class members. The Plaintiff and all of the class members have sustained and will continue to sustain damages of the same nature as a result of the intentional and systematic underpayment of royalty by Mobil.

15. Common questions of law and fact exist as to all the members of the class and predominate over any questions affecting only individual members of the class.

16. The Plaintiff will fairly and adequately protect and represent the interests of the class members and has retained competent counsel to handle this action. The Plaintiff is a member of the class and his claims are typical of the claims of each class member. Moreover, Plaintiff does not have any interest antagonistic to or in conflict with those he represents as class representative.

17. The prosecution of separate actions by or against individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for a party opposing the class; or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

18. Mobil has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole.

19. A class action is superior to other available methods for a fair and efficient adjudication of this controversy taking into consideration the interest of members of the class in individually controlling the prosecution or defense of separate claims, the extent and value of any litigation concerning the controversy already commenced by or against members of the class, the

desirability or undesirability of concentrating this litigation in this particular forum, and the difficulties likely to be encountered in the management of a class action. Because the damages sustained by individual class members may be relatively small, albeit significant, the expense and burden of individual litigation makes it impossible or economically unfeasible for the members of the class individually to seek redress for the wrongful conduct claimed in this petition. Absent a class action, Mobil will likely retain the benefits of its wrongdoing, and will continue in its current conduct to the detriment and injury of the Plaintiff and class members. The Plaintiff claims that there are no difficulties likely to be encountered in the management of the class action.

E. Background Facts

20. Mobil is engaged in the exploration for and development of natural gas, natural gas liquids and crude oil in the United States. Mobil is also engaged in the business of purchasing and marketing natural gas and/or natural gas liquids in the United States.

21. A lessee is obligated to market production from the lease, including natural gas and natural gas liquids, diligently and at the best current price reasonably obtainable. Plaintiff believes Mobil has breached this covenant to reasonably market the gas and liquids. Plaintiff believes that Mobil has specifically established a system of doing business that causes excessive and unreasonable royalty-free revenues to be funneled into Mobil and its subsidiaries and/or affiliates to the detriment of the Royalty Owners. This conduct constitutes a breach of Mobil's implied lease obligations to the Royalty Owners.

22. Mobil knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners by misrepresenting the post-production charges incurred by Mobil and improperly deducting those charges from the natural gas royalties paid to the Royalty Owners. These charges include overhead expenses, processing fees, marketing fees, and other charges not actually

incurred by Mobil. Mobil knowingly and intentionally reduced the natural gas royalties it paid to the Royalty Owners by deducting certain expenses (including overhead) that were unrelated to natural gas production or marketing. This reduced the value on which natural gas royalties were reported and paid by Mobil and, as a result, the Royalty Owners suffered substantial damages.

23. Mobil knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners by manipulating natural gas prices and fraudulently concealing the same from the Royalty Owners through the use of complex marketing arrangements that prevented the Royalty Owners from discovering the underpayments. For example, in reporting the value of natural gas production, Mobil would (i) calculate the natural gas royalties as though all the natural gas from a particular lease or area was delivered to a distant market location and (ii) deduct transportation and other costs from that distant location back to the lease or valuation point. However, not all the natural gas was delivered to the distant location; instead, a substantial portion of the natural gas was delivered to a location much closer to the lease or valuation point. As a result, the transportation and other costs actually incurred by Mobil were much lower than those charged by Mobil. Consequently, Mobil underpaid the natural gas royalties it actually owed and the Royalty Owners suffered substantial damages. As a further example, Mobil knowingly and intentionally used improper index prices to establish an invalid "value" for natural gas prior to the deduction of costs and expenses. The use of this improper low price allowed Mobil to underpay its natural gas royalties, and the Royalty Owners thereby suffered substantial damages.

24. Mobil also manipulated the pipeline natural gas imbalance volumes to (i) receive premium prices, (ii) report sales prices to the Royalty Owners that were less than those premium prices, and (iii) calculate its natural gas royalties on the lower sales prices. Mobil consistently sold natural gas during peak demand/high price periods in excess of the natural gas for delivery and

creating pipeline imbalances during these peak periods. Mobil then made up these imbalances during low demand/low price periods. Mobil based its natural gas royalty payments to the Royalty Owners on the market price at the time the natural gas was produced from the wellhead rather than the actual sales prices received at the time Mobil sold the natural gas during the peak demand/high price time. Mobil also knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners by improperly taking advantage of its access to natural gas storage facilities by producing and flowing gas into storage during low demand/low price periods and actually selling the natural gas during high demand/high price periods. Mobil paid its natural gas royalties to the Royalty Owners based on the artificially selected prices at the time the natural gas was injected into storage without regard to the ultimate sales price. As a result, the Royalty Owners suffered substantial damages.

25. Mobil also knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners by deducting improper pipeline fuel charges. Mobil routinely deducted the maximum fuel charge allowed under the pipeline tariff on file with the Federal Energy Regulatory Commission for the pipeline transporting the natural gas to a sales location. Mobil rarely actually incurred or paid such fuel charges. Instead, Mobil several months later would be charged and pay only the actual fuel used by the pipeline company. This fuel usage was almost always less than the fuel charge used by Mobil in calculating the natural gas royalties owed to the Royalty Owners. As a result, the Royalty Owners suffered substantial damages.

26. Mobil knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners as a result of Take-Or-Pay settlement agreements ("Settlements") Mobil had entered into with numerous major interstate natural gas pipeline companies ("Pipeline Companies"). The Settlements provided for Mobil to receive Take-Or-Pay settlement credit (in lieu

of money) from Pipeline Companies (such credit internally known as Transportation Banks) during a fixed time frame. Mobil's Transportation Bank credit was reduced over the allotted time by the cost of natural gas transportation services provided by the Pipeline Companies to Mobil. Because Mobil's Transportation Bank credit had to be completely reduced within the allotted time, it was in the best interest of both Mobil and the Pipeline Companies for the Pipeline Companies to invoice Mobil for the maximum natural gas transportation rate on all natural gas volumes transported during this time frame. Of course, prior to establishing Mobil's Transportation Banks, Mobil had the incentive to negotiate lower natural gas transportation rates to maximize profits and the Pipeline Companies had the incentive to negotiate lower rates to keep their pipeline systems operating at maximum capacity. Because Mobil used the maximum natural gas transportation rates to calculate the natural gas royalty payments it made to the Royalty Owners, the Royalty Owners received payments from Mobil that were burdened with substantial improper deductions. Therefore, the Royalty Owners suffered substantial damages.

27. Mobil knowingly and intentionally underpaid the natural gas royalties it owed to the Royalty Owners by failing to include in its royalty calculations the premiums it received under warranty natural gas sales contracts. Specifically, Mobil entered into warranty contracts guaranteeing to sell a certain volume of natural gas to a purchaser. In exchange for the warranty, Mobil demanded a premium above the actual market value of the natural gas. Mobil did not take into account these premiums in calculating the natural gas royalties it owed to the Royalty Owners. As a result, the Royalty Owners suffered substantial damages.

28. Since at least 1988, Mobil has engaged (and continues to engage) in some or all of the schemes described above. These schemes allowed Mobil to improperly deprive the Royalty Owners of natural gas royalties to which they are entitled.

29. All conditions precedent have been performed or have occurred.

COUNT I
Breach of Contract

30. The allegations of the preceding paragraphs are incorporated herein as if fully set forth.

31. The conduct of Mobil described above constitutes a breach of the implied covenant to manage and administer the Plaintiff's and class members' oil and gas leases as a reasonably prudent operator and specifically a breach of the implied contractual duty to market the natural gas and natural gas liquids diligently and to obtain the highest price reasonably possible. This duty to the Plaintiff and class members arises under the leases between Mobil and the Plaintiff and class members.

32. The Plaintiff and all class members have been significantly damaged by Mobil's breach of the implied covenant to manage and administer the leases in an amount within the jurisdictional limits of the Court.

COUNT II
Unjust Enrichment

33. The allegations of the preceding paragraphs are incorporated herein as if fully set forth.

34. To the extent that Mobil has engaged in self-dealing and its post-production activities have resulted in excessive and unreasonable profits, Mobil has been unjustly enriched. These funds should be considered part of the funds received from the sale of the natural gas and natural gas liquids and Plaintiff and all class members should be entitled to receive a revenue interest share.

35. To the extent that Mobil has not paid these funds to the Plaintiff and all class members, these funds represent money had and received and/or unjust enrichment to Mobil. These funds in equity and good conscience belong to the Plaintiff and all class members.

36. The Plaintiff and all class members have been significantly damaged by Mobil's unjust enrichment in an amount within the jurisdictional limits of the Court.

COUNT III

Action for Accounting

37. The allegations of the preceding paragraphs are incorporated herein as if fully set forth.

38. Plaintiff believes that Mobil has been failing to pay the full amount due for royalty. The Plaintiff also claims that Mobil has been diverting funds that should be part of the royalty income of the Plaintiff and all class members in order to wrongfully profit Mobil.

39. The Plaintiff and class members demand that Mobil provide an accounting of all transactions relating to the sale or marketing of gas produced from Plaintiff's and class members' lands.

F. Statute of Limitation

40. The causes of action set out above are not barred by any statutes of limitations because they were timely filed within the period set forth in the applicable statutes of limitations.

41. In the alternative, if it is shown for any reason that a limitations period is applicable to this suit, then the Plaintiff will show that Mobil has by fraud induced the Plaintiff not to file suit within such limitations period.

42. In the alternative, the Plaintiff will show that this suit has been filed within the proper time after the Plaintiff discovered or, in the exercise of reasonable care, should have discovered, the injuries inflicted by Mobil.

Attorneys' Fees

43. It has become necessary to employ attorneys to pursue this action. The Plaintiff is entitled to recover necessary and reasonable attorneys' fees from Mobil.

Request for Jury Trial

44. Plaintiff requests a trial by jury on all disputed factual issues.

Prayer For Relief

WHEREFORE, the Plaintiff requests that Mobil be cited to appear and answer herein, and that the Court upon hearing:

1. Enter an Order certifying this as a class action, said class to consist of (1) all individuals and entities that own or have owned royalties under leases producing natural gas and natural gas liquids, (2) owned and/or operated by Mobil and/or any subsidiary or affiliated company of Mobil, (3) where Mobil and/or any subsidiary and/or affiliated company of Mobil markets and/or purchases the natural gas and/or natural gas liquids and/or processes, markets and/or purchases the liquids produced from the gas.
2. Order that Mobil account for all funds received from gas purchasers for the sale of natural gas and natural gas liquids, from affiliate sales, for processing fees, for all post-production fees paid to Mobil, and for any other fees paid by gas purchasers related to gas produced from the Plaintiff's and class members' lands;
3. Awarding the Plaintiff actual damages together with pre-judgment interest thereon at the legal rate until judgement;
4. Awarding the Plaintiff reasonable and necessary attorneys' fees incurred herein;
5. Awarding the Plaintiff post-judgment interest on all amounts awarded at the legal rate until paid; and
6. Awarding such other relief or equitable, special or general, to which the Plaintiff and the class members are justly entitled.

Respectfully submitted,

FLEMING & ASSOCIATES, L.L.P.

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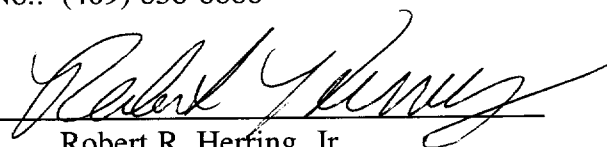
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